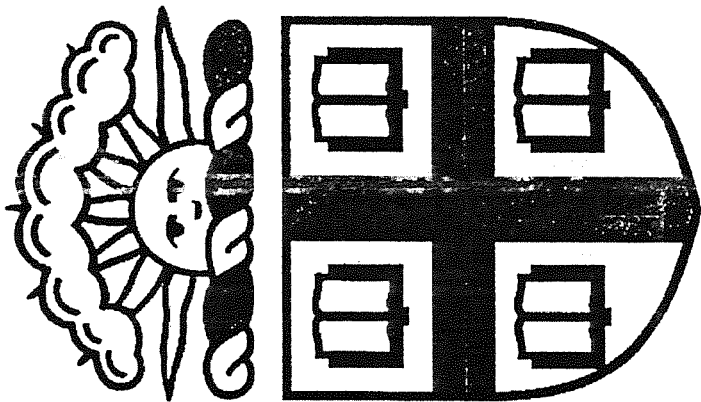


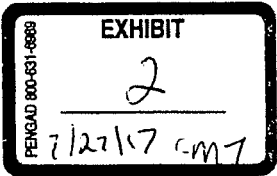
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EXHIBIT 9

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STUDENT CONDUCT BOARD

Procedures providing for prompt,
fair, and impartial investigation
and resolution of student sex
discrimination complaints

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Students and student organizations charged with offenses against the Code of Student Conduct are afforded the following rights in University proceedings:

- A. To be informed in writing of the charge(s) and alleged misconduct.
- B. To be assumed not responsible of any alleged violations unless she/he is so found through the appropriate student conduct hearing.**
- C. To have an advisor during a formal investigation, a hearing before the Student Conduct Board, an administrative hearing, or a student organization hearing. The advisor may be any person of their choice within the University community who is a full time faculty or staff member and is not an attorney.
- D. To have a reasonable length of time to prepare a response to any charges.**
- E. To be informed of the evidence upon which a charge is based and accorded an opportunity to offer a relevant response.**
- F. To be given every opportunity to articulate relevant concerns and issues, express salient opinions, and offer evidence before the hearing body or officer.** (Students have the right to prepare a written statement in matters that may result in separation from the University.)
- G. To be afforded confidentiality, in accordance with University practices and legal requirements.
- H. To request that a hearing officer or member of a hearing body be disqualified on the grounds of personal bias.
- I. To have a timely determination of the charges.
- J. To appeal a decision.
- K. To refrain from providing information that is self-incriminating.**

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SANCTIONS UNDER THE STUDENT CONDUCT CODE

❖ Violations of the Student Conduct Code may result in the following sanctions, in order of increasing severity:

- 1. Reprimand**
- 2. Probation**
- 3. Deferred Suspension**
- 4. Suspension**
- 5. Expulsion**

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STUDENT CONDUCT BOARD

The Senior Associate Dean for Student Life may refer offenses that involve **possible separation from the University or a transcript remark** to the Student Conduct Board (SCB) for a hearing. The Conduct Board will **review the evidence, hear testimony, and receive information**. The Conduct Board further **determines whether the respondent(s) is responsible for violations** of the Code of Student Conduct, and, as appropriate, recommends a sanction.

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STUDENT CONDUCT BOARD

SCB hearings proceed as follows:

1. The chair reads the charge(s) and informs the respondent(s) of the right to remain silent.
2. The case administrator is available to answer questions about the case materials.
3. The respondent or his/her advisor may make an opening statement.
4. The complaining witness or his/her advisor may make an opening statement.
5. The Conduct Board examines the evidence and the testimony of any witnesses. The respondent(s) and the complaining witness(es) may ask questions of all witnesses. The chair may require that all questions be directed through the chair. At the discretion of the chair, witnesses may be recalled.
6. The complaining witness or his/her advisor may make a closing statement.
7. The respondent or his/her advisor may make a closing statement.

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STUDENT CONDUCT BOARD

“When the University investigates a claim of sexual assault, sexual misconduct, domestic violence, dating violence and stalking, student participants in the University’s student conduct process, both complainants and respondents, are permitted to have **an advisor** ★ during a formal investigation, [and at] a hearing before the Student Conduct Board...” ★ **an attorney**

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STANDARD OF PROOF

Code of Student Conduct

- “Standard of Evidence. In determining whether or not an offense has been committed, a hearing body or officer will base its determinations on the standard of preponderance of evidence.”
- **More Likely Than Not**

Criminal Law

- **Beyond a Reasonable Doubt**

More than Half

"Preponderance" means more than half. If, for example, the hearing panel concludes that the evidence — considered overall — weighs equally on both sides, the preponderance standard has not been met and the charges have not been proven.

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SEXUAL MISCONDUCT

Brown University prohibits sexual misconduct as defined by Offense III in the Code of Student Conduct, as follows:

- III.a. Sexual Misconduct that involves **non-consensual** physical contact of a sexual nature, and
- III.b. Sexual Misconduct that includes one or more of the following: penetration, violent physical force, or injury.

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SEXUAL MISCONDUCT

Sexual Misconduct encompasses a broad range of behaviors, including acts using **force, threat, intimidation, or advantage gained by the offended student's mental or physical incapacity or impairment of which the offending student was aware or should have been aware.**

A **charged student's** use of any drug, including alcohol, judged to be related to an offense will be considered an exacerbating rather than a mitigating circumstance.

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SEXUAL ASSAULT UNDER RHODE LAND LAW

RHODE ISLAND SEXUAL ASSAULT STATUTES

§ 11-37-2 First degree sexual assault. A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if any of the following circumstances exist:

- (1) The accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.
- (2) The accused uses force or coercion.
- (3) The accused, through concealment or by the element of surprise, is able to overcome the victim.
- (4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.

§ 11-37-4 Second degree sexual assault. A person is guilty of a second degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:

- (1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled or physically helpless.
- (2) The accused uses force or coercion.
- (3) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification or stimulation.

§ 11-37-6 Third degree sexual assault. A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age.

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genital or anal openings of another person's body, or the victim's own body upon the accused's instruction, but emission of semen is not required.

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OCR Questions and Answers on Title IX and Sexual Violence April 29, 2014

A-1. What is sexual violence?

“Answer: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the student’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent)...”

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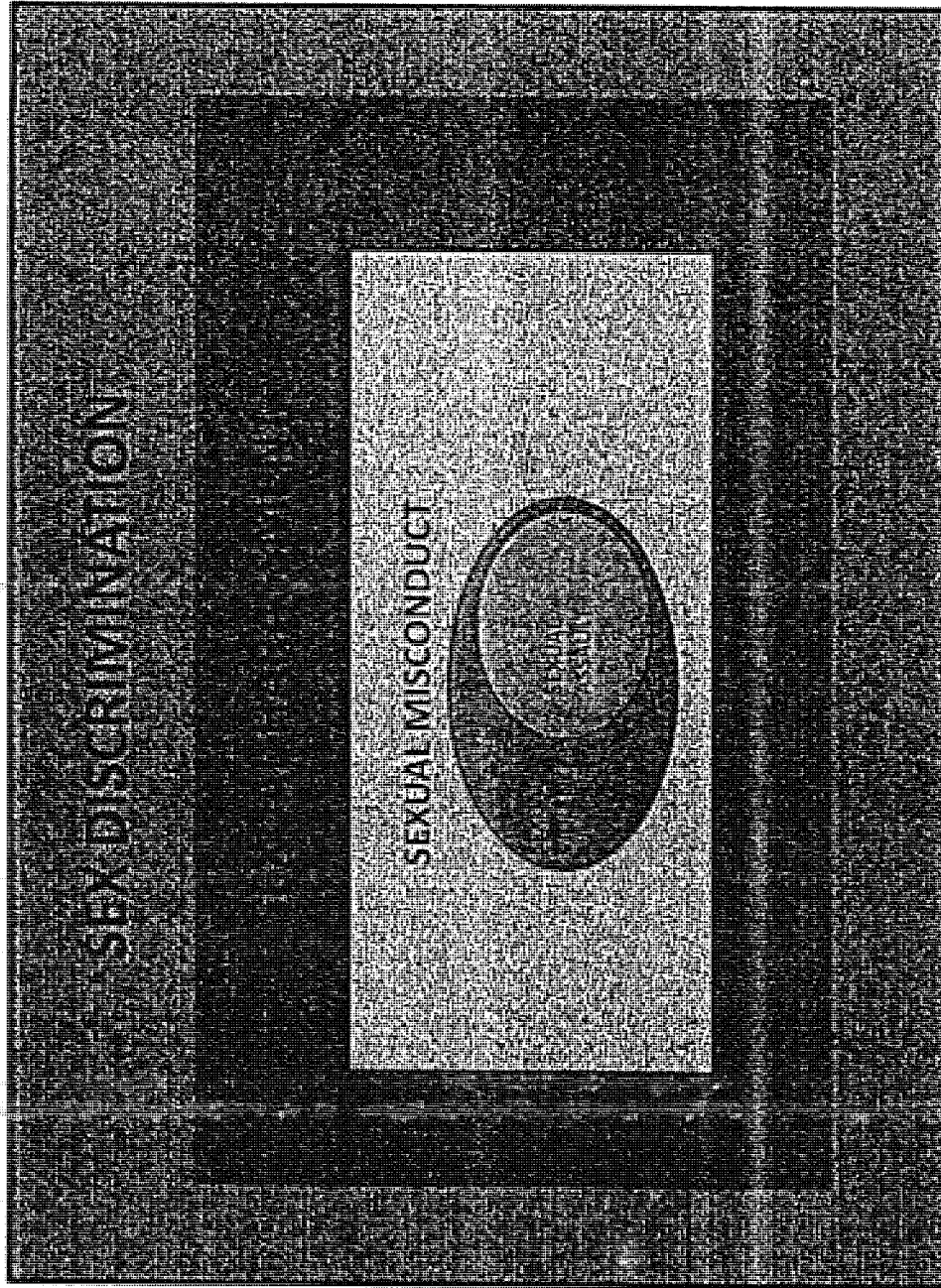
FORCIBLE AND INCAPACITATED SEXUAL ASSAULT

- **Forcible sexual assault.** In forcible sexual assault, the victim has the capacity to consent and does not do so. The assailant may use **force or threats or intimidation.**
- **Incapacitated sexual assault.** An assault against a victim who is unable to give consent. **The victim may have diminished mental capacity, may be asleep, or may be under the influence of alcohol or drugs.** The victim may have ingested the alcohol or drugs (or both) knowingly or unknowingly. The common element is that the victim cannot, and does not, consent.

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CONSENT

- **consent** 1) n. a voluntary agreement to another's proposition. 2) v. to voluntarily agree to an act or proposal of another, which may range from contracts to sexual relations.
- **consent** Voluntary Acquiescence to the proposal of another; the act or result of reaching an accord; a concurrence of minds; actual willingness that an act or an infringement of an interest shall occur.

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CONSENT

- Consent is required for all sexual contact.
- Consent may be withheld in a number of ways. *The absence of "no" should not be interpreted as "yes."*
- Consent for one activity does not mean consent for all activities. *Consent cannot be presumed.*
- Inability to consent due to intoxication means "no."
- The responsibility for misinterpretation when either party has been drinking falls on the initiator of further sexual activity.

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OFFENSE IV OF THE STUDENT CONDUCT
CODE PROHIBITS SEXUAL HARASSMENT

IV. Subjecting another person or group to abusive, threatening, intimidating, or harassing actions, including, but not limited to, those based on race, religion, **sex/gender**, disability, age, economic status, ethnicity, national origin, **sexual orientation, gender identity, or gender expression.**

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What is Sexual Harassment

- Sexual Harassment is unwelcome conduct of a sexual nature.
- **Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.**
- Sexual Harassment of a student can deny or limit on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program.

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STUDENT CONDUCT BOARD'S RESPONSIBILITIES

- review the evidence,
- hear testimony, and
- receive information
- determine whether the respondent(s) is responsible for violations of the Code of Student Conduct, and,
- as appropriate, recommend a sanction.

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Was Respondent Responsible for Committing Offense IIIa

- ☐ Was there non-consensual physical contact of a sexual nature?
 - ☐ Was there physical contact?
 - ☐ Was the physical contact of a sexual nature?
 - ☐ Was any of the contact non-consensual?
 - ☐ Did the Complainant Consent?
 - ☐ Did the Complainant Have the Capacity to Consent?
 - ☐ Did Respondent Know or Should Have Known About Lack of Capacity?
 - ☐ Did Respondent Use Force? Threats? Or Intimidation?

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Was Respondent Responsible for Committing Offense IIIb

- ☐ Was there non-consensual physical contact of a sexual nature that included penetration, violent physical force, or injury?
 - ☐ Was there physical contact?
 - ☐ Was the physical contact of a sexual nature?
 - ☐ Was any of the contact non-consensual?
 - ☐ Did the Complainant Consent?
 - ☐ Did the Complainant Have the Capacity to Consent?
 - ☐ Did Respondent Know or Should Have Known About Lack of Capacity?
 - ☐ Did Respondent Use Force? Threats? Or Intimidation?
- ☐ Was there penetration, violent physical force, or injury?

*"Hear the case before
you decide it."*

What does this mean?

Why is it a critical component of the
"equitable" and "impartial" adjudicatory
process expected by OCR and the courts?

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JUDGING CREDIBILITY: *Who do you Believe?*

Questions to consider in weighing the relative credibility of conflicting accounts:

- ✓ Which account makes most sense?
- ✓ Could the individuals have seen or heard what they claimed?
- ✓ Should the individuals have seen or heard more than they claimed?
- ✓ Does one account offer reasoned explanations for the major inconsistencies between the versions?
- ✓ How general or detailed were the statements and testimony?
- ✓ What reasons might either party have to lie or exaggerate?
- ✓ Has either party offered a plausible explanation of why the other might be lying?
- ✓ Does any individual have special loyalty to, or special grudge against, the complainant or respondent?

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Eliciting Relevant Evidence

- The Complainant's Sexual History Is **Not Relevant** in Determining:
 - What Happened On the Day in Question?
 - Was the Complainant Able to Give Consent?
 - Did Respondent Use Force? Threats? Or Intimidation?
- Are there Other Examples of **Irrelevant** Evidence?

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Eliciting Relevant Evidence About Incapacitation

Warning signs that a person may be approaching incapacitation may include:

- slurred speech,
- vomiting,
- unsteady gait,
- odor of alcohol, or
- emotional volatility.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; or
- capacity to appreciate the nature and the quality of the act.

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